



9910-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0470]

RIN 1625-AA09

Drawbridge Operation Regulation; Apalachicola River, FL

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

SUMMARY: The Coast Guard is changing the regulation that governs the operating schedules for two bridges that cross the Apalachicola River in Florida. These changes are being made in response to two requests to the Coast Guard.

First, the CSX Railroad requested to modify the operating schedule of their swing bridge at mile 105.9, at River Junction to require eight hours advanced notice at all times. Second, the Apalachicola and Northern Railroad (ANRR) requested to maintain the swing bridge at mile 4.5 (GIWW mile 347.0 East of Harvey Lock (EHL)), at Apalachicola, untended and in the open-to-navigation position at all times.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The docket for this rulemaking, USCG-2012-0470, is available online by going to <http://www.regulations.gov>, inserting USCG-2012-0470 in the "Search" box, and then clicking "Search." The docket is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or e-mail David Frank, Bridge Administration Branch; telephone 504-671-2128, email David.M.Frank@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

A. Regulatory History and Information

On July 30, 2012, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulation; Apalachicola River, FL" in the Federal Register (77 FR 44525). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The CSX swing bridge across the Apalachicola River, mile 105.9, presently opens on signal for the passage of vessels Monday through Friday from 8 a.m. until 4 p.m. At all other times, the bridge opens on signal if at least four hours advanced notice is given. The bridge owner has requested to change the operation regulations to reflect usage of the bridge by mariners. The request was made based upon a documented decrease in the number of requests for openings in the last three years. In 2010, the bridge opened 12 times for the passage of vessels. Eight of those openings were for either a United States Coast Guard (USCG) vessel or for a United States Army Corps of Engineers (USACE) vessel. In 2011, the bridge opened four times for the passage of vessels. Three of those openings were for either a USCG vessel or for a USACE vessel. Thus far in 2012, the bridge has only opened one time for a USACE vessel. It should be noted that all of the openings in the

past three years have occurred between 8 a.m. and 4 p.m.; therefore, the bridge opened on signal for their passages. Information gathered regarding the decrease in vessel movements indicates that the lack of commercial facilities and the lack of maintenance on the waterway have contributed to the decline in traffic. While water elevations may return to their pre-drought levels, there is presently no evidence that the number of requests for bridge openings will increase in the future due to limited industrial development along the waterway. Accordingly, the bridge owner requested to change the operation regulations so that the bridge is allowed to open on signal at all times if at least eight hours advanced notification is given. USACE and USCG units using the waterway indicated that the proposed change to the operation of the bridge will not affect their ability to maintain the waterway and they have no objections to the proposed change.

The ANRR swing span bridge crosses the Apalachicola River at mile 4.5 (GIWW mile 347.0 EHL) and is required to open on signal for the passage of vessels. Since the bridge owner applied for and received an embargo for the suspension of train traffic on the line, the operation of the bridge is unnecessary and the operator of the bridge

requested permission to leave the bridge in the open-to-navigation position and have the bridge untended. The bridge provides unlimited vertical clearance and 119 feet of horizontal clearance in the open-to-navigation position. Transit times for mariners should not be impeded with the bridge left in the open-to-navigation position. The bridge owner/operator will be required to maintain all bridge navigation lights in proper working order and will be required to periodically check the lights to see that they are working.

C. Discussion of Comments, Changes, and the Final Rule

The Coast Guard provided a 60-day comment period on the notice of proposed rulemaking. No comments were received and no changes were made to the rule as proposed.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Very few vessels will be impacted by the proposed changes and those few vessels should be able to provide adequate advanced notification of their arrivals as is already done for the CSX Railroad bridge and vessels may transit through the ANRR bridge without delay as it will be maintained in the open-to-navigation position.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that

this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit the Apalachicola River above mile 105.9. This action will not have a significant economic impact on a substantial number of small entities because these few vessels should be able to provide adequate advanced notification of their arrivals.

This action will not have a significant economic impact on a substantial number of small entities because these few vessels should be able to provide adequate advanced notification of their arrivals.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of

protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform,

to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant

regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a

categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.258 to read as follows:

§117.258 Apalachicola River.

(a) The draw of the Apalachicola and Northern Railroad Bridge, mile 4.5 (GIWW mile 347.0 EHL), at Apalachicola, is maintained in the fully open-to-navigation position and untended. The bridge will not be returned to service until proper notification is published in the Federal Register.

(b) The draw of the CSX Railroad Bridge, mile 105.9, at River Junction shall open on signal if at least eight hours notice is given.

Dated: December 10, 2012

Roy A. Nash
Rear Admiral, U.S. Coast Guard
Commander,
Eighth Coast Guard District

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